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June 16, 2008

Honorable Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423-0001

Re: Docket No. 32760, Union Pacific Corporation, et al. – Control and  
Merger – Southern Pacific Rail Corporation, et al.

Dear Secretary Quinlan:

I am writing on behalf of Union Pacific Railroad Company ("UP"). UP recently learned that the City of Richmond sent the Board a letter relating to the above-referenced matter on June 2, 2008. The City's letter does not appear in the Board's electronic docket and was not served on UP.

The City's letter reflects several misconceptions regarding matters addressed in Board's decision served May 1, 2008 – apparently as a result of incomplete information provided by BNSF Railway Company ("BNSF"). UP is working directly with the City to correct these misconceptions and discuss possible solutions to the City's concerns, but we need to correct the misconceptions in the public record.

First, the City suggests that the Board's decision prevents BNSF from exercising trackage rights that "BNSF was able to negotiate" to operate certain intermodal trains over UP's Martinez Subdivision. However, as the Board is aware, BNSF did not negotiate the trackage rights at issue; instead, BNSF tried to exploit a drafting error by UP. Moreover, BNSF never obtained the necessary Board authorization to exercise those rights. The Board thus correctly held that BNSF had failed to obtain authorization for the trackage rights and that BNSF could not obtain such authorization unless "the parties mutually agree" to new trackage rights. Decision at 7.

Second, the City expresses concern that the Board's decision may preclude BNSF from exercising any new trackage rights it might obtain voluntarily from UP. However, the decision would not prevent UP and BNSF from voluntarily agreeing to new trackage rights.

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The decision simply reinforces the established legal principle that trackage rights must be based on a mutual, voluntary agreement between the parties.

Third, BNSF apparently never told the City that it already had obtained the right to build a new connection that would mitigate the impact of increased rail traffic on the City. As UP has explained to the Board, UP agreed back in 1996 in *UP/SP Merger* that BNSF may build a connecting track from UP's Cal-P Line north of Richmond to the nearby BNSF line, so that BNSF could enter and exit UP's mainline and access its own mainline toward Stockton. This would allow BNSF to use UP's line for a short distance to avoid expanding traffic on its own line through the Richmond, without delaying passenger trains and consuming valuable capacity on the Cal-P Line all the way to Sacramento. When UP representatives talked to City officials, the officials were unaware that this option has existed for almost 12 years.

UP has told the City that it is willing to facilitate a solution involving construction of a new connection, and it has encouraged the City to raise the issue with BNSF, so that all the parties can be involved in a constructive dialogue.

Sincerely,



Michael L. Rosenthal

cc: Parties of Record  
William Lindsay, City Manager  
City of Richmond